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SUMMARY

The majority of commenting parties have objected to the Commission's freezing of its processes for acceptance of paging applications and, in further comments, have now objected to the Commission's proposed methods of auctioning paging spectrum. SBT joins those commenters which have stated that the proposed auctioning of paging channels will be detrimental to small businesses and other designated entities.

SBT notes the obvious problems cited by the Commission in meeting its proposed objectives, including reconciling the Commission's duty to support BETRS; providing necessary protections for private operators in accord with 47 U.S.C. §332; and demonstrating that such auctions are, in fact, authorized under 47 U.S.C. §309. SBT further notes that supporting commenters have not solved the Commission's problems and their efforts to further skew the proceeding in favor of the largest operators has, more likely, exacerbated the Commission's difficulties.

SBT states that the Commission's efforts, however well meaning, are not well considered and should be abandoned. And if not abandoned, SBT respectfully suggests that the Commission must provide much greater support for designated entities.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Revision of Part 22 and Part 90)
of the Commission's Rules to) WT Docket No. 96-18
Facilitate Future Development of)
Paging Systems)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act --)
Competitive Bidding)

To: The Commission

REPLY COMMENTS OF
SMALL BUSINESS IN TELECOMMUNICATIONS

Small Business in Telecommunications ("SBT") hereby offers its comments on reply within the above captioned proceeding and states the following:

The Majority of Commenting Parties
Opposes The Commission's Proposals

Mirroring the wide-spread objection to the Commission's freezing of its processes for accepting applications to construct new or expanded paging systems, the commenters within this proceeding have, in the majority, rejected the Commission's specific proposals to auction paging spectrum. SBT agrees with the objecting parties and reiterates its earlier comments, which stated that the Commission is proposing rules which would be unnecessary, impractical and injurious to small business. SBT further supports the comments of other parties which stated:

The Commission's premise, that the shared channels can be converted to exclusive use, is misplaced given the co-channel environment in most large and medium sized markets, and even in many of the smaller markets. Therefore, Teletouch urges the Commission to abandon its proposal to license what is currently shared spectrum, on a market area basis. Abandoning such auctions would be in the public interest, in order to preserve the current level of quality service to the public, and to avoid stranding millions of dollars invested in existing systems. Comments of Teletouch Licenses, Inc. at pg. 2.

. . . these advantages [for small businesses] are unlikely to make a difference in determining whether smaller entities can successfully bid on an entire MTA. Therefore, the Coalition does not view bidding credits and similar small business measures as tipping the balance in favor of market area licensing. Comments of The Paging Coalition at pg. 18.

First, as a general matter, experience with competitive bidding does not bode well for any company without deep pockets. Comments of Consolidated Communications Mobile Services, Inc. at pg. 5.

While it is not clear what impact the Commission's efforts to encourage small business might eventually have, it is clear that, at least for the moment, the auction environment is not hospitable to those without very significant resources. Id.

[T]he geographic licensing/auctions proposal threatens the viability of small and mid-sized incumbents because it signals that they should "sell out." By presuming that transfer to a geographic licensee of an incumbent's license is in the public interest, the Commission is presuming that big is better than little. Id. at pg. 7.

Auctions would create unnecessary burdens and problems for incumbent licensees with no discernible public benefit. Comments of Paging Partners Corporation at pg. 5.

[T]he auctioning of "white space" could inhibit the growth of small to mid-sized operators and restrict their ability to respond to customer demand for increased coverage. In short, such a circumstance is not in the public interest and certainly would not have been anticipated by Congress. The prospect of federal revenues coming from this auction does not mitigate this damage to the public interest. Comments of Source One Wireless, Inc. at pg. 5.

[A]uctions will be antithetical to most, if not all, of the goals expressed in the [Initial Regulatory Flexibility Analysis]. If the past is prologue (see IVDS auctions), paging spectrum auctions will create an artificial demand for spectrum

by attracting bidders parties who have little, if any, genuine interest in operating common carrier systems. Artificial demand for paging spectrum will outrun supply, prices will escalate and will likely not reflect fair value. Incumbent paging licensees, who are unwilling or unable to meet newcomers' terms for geographic expansion, will turn to the FCC for relief. If spectrum auctions produce inflated bid prices, winners may find it difficult if not impossible to satisfy build-out requirements with the result that authorizations will be forfeited. Forfeitures will occur after three years, instead of the one-year period specified for in 47 C.F.R. Section 22.142, thereby creating unintended warehousing of spectrum since the spectrum can be taken for three years instead of one. Comments of Pass Word, Inc. and its affiliate Coeur d'Alene Answering Service, Inc. at pg. 5.

Now confronted with this chorus of comments which harmonize in their objections to the Commission's proposals, the Commission must consider whether its primary proposal, to auction paging spectrum for operation of geographic licensed systems, is either not appropriate or not in accord with its Congressionally-mandated auction authority. SBT strongly avers, in concert with the many other opposing commenters, that the Commission's auction proposals satisfy none of the thresholds created by Congress and should be summarily rejected.

SBT respectfully points to the commenters' shared criticism of the Commission's efforts to provide access to the auction proceeding for small to medium-sized entities as one of the bases for rejection of the Commission's proposals. The PCS auctions and the 900 MHz SMR auctions have created an abysmal record on which the Commission might rely in demonstrating that its proposals will meet its Congressionally-mandated objectives to provide access to spectrum via auctions to designated entities. To the contrary, those proceedings have amply demonstrated the acute need for greater protection for designated entities in the Commission's future use of its auction authority.

The Bigger They Are
The Louder They Cheered

It is no surprise that the largest paging entities supported, in the main, the Commission's proposals.¹ Each is adequately positioned with sufficient financing and economic resources to rely on their ability to obtain spectrum via auction. A large, publicly-traded, corporation can sell additional securities and debt instruments to finance auction participation, particularly when such investments will net them some degree of market dominance throughout geographic regions. Yet, none of these supporting parties has (or can) identify the source of such financing for small to medium-sized businesses. Although this callous "let them eat cake" approach might be expected in the area of high finance and Wall Street machinations, it does not reflect the Commission's duty to support the public interest, including the interests of small business.

If the Commission is seeking examples of the delineation of interests between commenting parties, the Commission may contrast the comments of AirTouch Paging with those of entities with smaller purses. AirTouch supports geographic licensing to relieve it of the burden it has had to endure in filing hundreds of applications per year, AirTouch Comments at n. 16, yet fails to note that many small businesses could not even afford the filing fees associated with such an effort. AirTouch continues its elitist view of the industry by declaring, "[a] typical system may have 50-100 transmitters covering an entire MTA or multiple MTAs," *id.* at n. 15. AirTouch's sweeping description of a "typical" system is outlandish.

¹ See, e.g., Comments of AirTouch Paging; Arch Communications Group; and American Paging, Inc. Yet, SBT notes that each has discovered substantial problems with the Commission's proposals as they apply to each's individual business and expansion plans.

By AirTouch's description, a typical paging system would include an average of 75 transmitters, each conservatively costing \$10,000 to construct, or \$750,000 in fixed assets. In addition, these transmitters' operation would require leasing 75 sites at, on average, \$250 per month, or \$3,000 per year, equalling fixed operational costs of \$225,000 per year. Add to those amounts, the cost of inventory, personnel, accounting, maintenance, telephone lines, advertising, legal costs, and the myriad of other necessary expenditures to operate a business which AirTouch considers "typical" and the Commission can easily discern that AirTouch's comments are premised on the belief that the typical paging system is operated by a multi-million dollar enterprise. SBT strongly disagrees with AirTouch's premise and suggests that AirTouch's perspective is so impaired by its presumptions that its comments are rendered, by in large, meaningless.

That AirTouch is out of touch is seen in its further comments in support of the Commission's proposal to employ MTA borders for geographic boundaries of wide-area licenses. AirTouch states that MTAs are "not so big as to exclude smaller carriers from meaningful participation in the marketplace." Id. at pg. 15. AirTouch provides no basis for this claim and none might be found. Again, AirTouch presumes that its "typical" paging system will fit neatly into an MTA, although it goes on to say that for really large companies, like AirTouch, it would be beneficial if some method of aggregating MTAs for truly huge paging systems might be created. SBT respectfully suggests that AirTouch's concerns are not representative of a majority of the marketplace or the commenting parties which might find it

difficult, if not impossible, to finance construction across an entire MTA, much less an aggregation of MTAs.

Seeking every advantage, without any concern for the interest of small business and the beneficial competition which they bring to the market, AirTouch continues its attempt to leverage its market power by suggesting each of the following in its comments: (1) additional time for construction of nationwide 929 MHz paging systems; (2) additional upfront payments at auction; (3) rejection of bidding credits for designated entities; (4) rejection of alternative payment plans for designated entities; (5) expanded construction benchmarks for maintaining a geographic-based license; and (6) relaxation of anti-collusion rules to promote future efforts toward greater consolidation of the market. In effect, AirTouch's comments are a "wish list" for large business, to the detriment of small business. Since nothing proposed by AirTouch would assist the Commission in meeting its mandate to provide access to its auction procedures by small business, women- and minority-owned business, or rural telephone companies, AirTouch's comments must be rejected as failing to assist the Commission in reaching a balanced, reasoned, approach within this proceeding.

SBT notes, however, that it does agree with a portion of AirTouch's comments. At paragraph 62 of its comments, AirTouch stated:

A strong argument also can be made that bidding credits do not provide any real benefit to small businesses. The results in the narrowband PCS auction clearly indicate that parties who were bidding with bidding credits ended up paying higher prices for licenses than did others without the credits. The net effect was that the small businesses received no comparative discount on their licenses. Consequently, the benefit of the bidding credit proved to be illusory.

AirTouch makes no attempt to explain this phenomenon, yet the reasons are simply stated. If bidding on spectrum, a participant with abundant resources is more likely to compete with an entity with less resources, because the expectation of victory is much higher. Accordingly, small business is challenged more freely at auction, since its larger competitors assume that it will be unable to keep up. This strategy, to focus on the weakest participants, has created over-concentration of spectrum via the 900 MHz SMR auctions, regardless of bidding credits, and has amply demonstrated that the Commission's use of bidding credits to date, has been insufficient to meet the Commission's objectives and the mandate of Section 309(j) of the Communications Act, 47 U.S.C. §309(j). Conversely, bidders shy away from competition with large companies, like AirTouch, assuming that the bidding will go extremely high if true competitive bidding continues. The net result of this obvious bidding strategy is that large companies wind up paying less for spectrum than small companies, even those small companies which are also incumbents in the market.²

Although AirTouch is correct that the bidding credits provided by the Commission in auctions to date have been insufficient to meet the Commission's objectives, that does not mean

² SBT respectfully invites the Commission to join in an appreciation of this irony. The legislative history to producing the Commission's auction authority articulated a goal of preventing unjust enrichment of those companies which Congress suspected were reaping windfalls through the use of a public asset, the radio spectrum. The Commission's use of bidding credits, thus far, has actually increased the level of unjust enrichment for the very targets of the legislation and has increased concentration of the market, reduced opportunities for designated entities, and has limited the distribution of licenses. Accordingly, the Commission must conclude that it has failed in its duties articulated by Congress, regardless of the agency's motivations, and has added to the problems which Congress sought to resolve.

that the Commission should abandon the use of bidding credits. To date, the use of bidding credits has resembled a horse race with insufficient handicapping of the weights of the competing jockeys. If the discrepancy between the heaviest and the lightest jockey is ten pounds, but the Board of Stewards only equalizes the weights by five pounds, it will not have succeeded in providing a full and fair opportunity for all competitors. Similarly, the failure of bidding credits, thus far, to provide meaningful opportunities for small business only indicates, if there is to be an auction, that the bidding credits must be sufficient to equalize fully the bidding power between big and small business.

Given the foregoing, it has become necessary for the Commission to revisit in *toto* its methods of providing access to spectrum for designated entities via auctions. Regardless of the fact that none of the auction proposals contained in this proceeding are appropriate, the Commission's future use of its auction authority must contain sufficient safeguards to avoid repeating its past failures in meeting its mandate to provide reasonable access to auction for designated entities.

Supporting Entities Failed To Provide Necessary Guidance

Although often long on support, the largest entities failed to provide necessary legal, procedural and technical guidance toward accomplishing those objectives which were articulated by the Commission in its NPRM. For example, no entity could explain with particularity how the Commission could reasonably continue to support the offering of BETRS while auctioning wide-area UHF licenses. Some alluded to partitioning, but did not explain how partitioning

might solve the Commission's real concerns. SBT concluded that partitioning will not work to balance the interests of rural telephone companies in continued provision of BETRS service as against the Commission's desire for geographic licensed paging systems, and SBT's conclusion is supported by the Comments of The Paging Coalition, which stated, "[b]ecause partitioning must be negotiated with the auction winner, it is not a complete solution." SBT respectfully suggests that partitioning is no solution.

Supporting entities echoed the words "regulatory symmetry" but failed to demonstrate how adoption of the Commission's proposals would create such symmetry among operators of PCP, CCP, BETRS, IMTS, and the narrowband PCS.^{3,4} In the same vein, commenters recognized the Commission's requirement that designated entities be provided access to the proposed auctions, but failed to articulate adequately how such access might reasonably be provided. As stated *supra*, some entities went so far as to claim that the Commission should reject bidding credits and alternative payment plans due to the agency's past failure to accomplish access by these methods in previous proceedings. What was lacking in supporting commenters' analyses was any justification that auctions, of any kind, be employed for the Commission's proposed purposes. That is, commenters made the same mistake that the Commission has made within the NPRM, by glossing over an initial discussion regarding

³ In contrast, commenters rejected any justification for adoption of the Commission's proposals based on its attempt to produce regulatory symmetry, see, Comments of Teletouch Licensing, Inc. at pg. 6.

⁴ SBT further notes that the Commission's proposals, if adopted, would cause an adverse impact upon Private Radio licensees, in violation of the Commission's duties under 47 U.S.C. § 332.

whether any auction proposed within this proceeding is appropriate in compliance with 47 U.S.C. Section 309(j)(3)(B), to deal only with the appropriateness of alternative payment plans for designated entities.

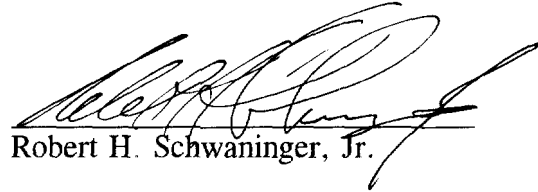
The record before the Commission does not support the use of auctions. Supporting commenters provided no legal or logical basis for use of auctions, other than allusions to administrative ease which cannot be demonstrated and which would be insufficient to justify curtailing the growth of existing systems, lessening competition in the marketplace, diverting limited resources from construction to auction payments, and disrupting the organic and vital growth of the paging marketplace. Accordingly, SBT avers that the comments fully demonstrate that the Commission should quickly abandon this proceeding as inconsistent with its obligation to serve the public interest and resume operation under the current Rules at the earliest possible time.

Conclusion

Consistent with the foregoing comments, the Commission should abandon this proceeding as ill considered in light of its Congressionally mandated obligations, contrary to the public interest, and as wholly injurious to the paging industry, in particular, small paging operators.

Respectfully submitted,
SMALL BUSINESS IN TELECOMMUNICATIONS

By



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Dated: April 2, 1996

CERTIFICATE OF SERVICE

I, Tara S. Williams, hereby certify that on this 2nd day of April, 1996, I caused a copy of the attached Reply Comments to be served by placing a copy in the United States mail first-class, postage prepaid to the following:

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